



Original: English

**No. ICC-01/14-01/18
Date: 05 April 2023**

TRIAL CHAMBER V

**Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public redacted version of

**Twenty-First Decision on the Prosecution Request for Formal Submission of
Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness
P-1974**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Richard Omissé-Namkeamaï
Marie-Hélène Proulx

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2), 67(1) and 69 of the Rome Statute, and Rule 68(1) and (3) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Twenty-first Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony under Rule 68(3) of the Rules concerning Witness P-1974’.

I. Procedural history

1. On 16 June 2022, the Office of the Prosecutor (the ‘Prosecution’) requested the introduction, under Rule 68(3) of the Rules, of the statements and associated items of P-1974 (the ‘Request’).¹
2. On 26 June 2022, the Yekatom Defence responded to the Request (the ‘Response’).²
3. On 27 June 2022, the Ngaïssona Defence indicated that it does not intend to respond to the Request and defers to the Chamber’s discretion.³

II. Analysis

4. The Chamber incorporates by reference the applicable law as previously set out.⁴

1. Submissions

¹ Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1974 pursuant to Rule 68(3), ICC-01/14-01/18-1463-Conf (with confidential Annexes A and B) (public redacted version notified the same day, ICC-01/14-01/18-1463-Red).

² Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1974 pursuant to Rule 68(3)’ 16 June 2022, ICC-01/14-01/18-1463-Conf, ICC-01/14-01/18-1479-Conf.

³ Email from the Ngaïssona Defence, 27 June 2022, at 12:40.

⁴ Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies under Rule 68(3) of the Rules concerning Witnesses P-1962, P-0925, P-2193, P-2926, P-2927, P-1577 and P-0287, and the Ngaïssona Defence Motion to Limit the Scope of P-2926’s Evidence, 10 March 2021, ICC-01/14-01/18-907-Conf (public redacted version notified on 1 April 2021, ICC-01/14-01/18-907-Red), paras 8-16. *See also* Decision on the Yekatom Defence Request for Leave to Appeal the Twelfth Rule 68(3) Decision regarding P-1704, 29 April 2022, ICC-01/14-01/18-1383, paras 4-17.

5. The Prosecution seeks to introduce the prior recorded testimony of witness P-1974, comprising two statements and five associated items.⁵ It submits that the introduction of P-1974's prior recorded testimony would reduce the presentation of its examination-in-chief and help to streamline the proceedings,⁶ reducing the time for its examination from six to approximately two hours.⁷ Moreover, according to the Prosecution, P-1974's statement is highly relevant and probative, and corroborated by other evidence.⁸
6. The Yekatom Defence opposes the Request. It submits that the [REDACTED].⁹ It argues that P-1974, [REDACTED] his motivation to provide false information and evidence would arguably be even more compelling than that of other, [REDACTED].¹⁰ Moreover, the Yekatom Defence submits that P-1974's account diverges from P-2018's account, that this divergence 'suggest[s] that it was [REDACTED] and that 'this portrayal of [REDACTED] takes on a new light'. Moreover, the Yekatom Defence submits the Prosecution's reliance on P-2018, P-2475 and P-2082 is misplaced.¹¹
7. Lastly, the Yekatom Defence states that in these circumstances, 'the fact that P-1974's statements contain multiple references to the acts and conduct of Mr Yekatom as charged, further compounds the prejudice that their admission via Rule 68(3) would occasion to the fairness of these proceedings', and that for these reasons P-1974 'should be called to provide his evidence before the Chamber, under oath and in full'.¹²

2. *The Chamber's determination*

8. In his first statement (the 'First statement'),¹³ P-1974 discusses, *inter alia*, (i) his [REDACTED]; (ii) the detention of child soldiers within the Seleka

⁵ Request, ICC-01/14-01/18-1463-Red, paras 1, 12-13, 19; Annex A to the Request, ICC-01/14-01/18-1463-Conf-AnxA.

⁶ Request, ICC-01/14-01/18-1463-Red, paras 3, 15.

⁷ Request, ICC-01/14-01/18-1463-Red, paras 1, 17.

⁸ Request, ICC-01/14-01/18-1463-Red, paras 5, 9, 11, 18.

⁹ Response, ICC-01/14-01/18-1479-Conf, para. 3.

¹⁰ Response, ICC-01/14-01/18-1479-Conf, para. 13.

¹¹ Response, ICC-01/14-01/18-1479-Conf, paras 15, 21.

¹² Response, ICC-01/14-01/18-1479-Conf, paras 17-18.

¹³ CAR-OTP-2068-0222; CAR-OTP-2107-1810 (translation).

[REDACTED]; (iii) [REDACTED]; (iv) UNICEF [REDACTED]; (v) seeing children within the Anti-Balaka [REDACTED] and estimating them to be between '10-18' years old; (vi) the demobilisation ceremony in Pissa on 4 August 2014; (vii) [REDACTED]; (viii) [REDACTED]; (ix) [REDACTED]; (x) the children being aged between 'the ages of 9 to 18'; (xi) the different roles of these children within the Anti-Balaka; (xii) [REDACTED]; (xiii) [REDACTED].

9. In addition, the witness makes a number of references to Mr Yekatom, including that (i) [REDACTED] had identified an Anti-Balaka commander, Alfred YEKATOM aka ROMBHOT, who had recruited children in his movement'; (ii) [REDACTED] meeting 'with ROMBHOT [REDACTED]; (iii) [REDACTED] reporting that he [REDACTED] 'ROMBHOT' and [REDACTED] 'ROMBHOT [REDACTED]; (iv) P-1974 knowing 'of ROMBHOT and that he was a FACA soldier'; (v) mentioning 'ROMBHOT's area of control/influence', and 'ROMBHOT' visiting villages on the road and on his elements still being 'present in PISSA'; (vi) 'ROMBHOT' [REDACTED] the villages to make an assessment of the number of children that were recruited by the Anti-Balaka; (vii) P-1974 [REDACTED] 'ROMBHOT' [REDACTED]; (viii) 'ROMBHOT' agreeing that '[ESF] could take the children and that he would not allow them to be recruited in the Anti-Balaka again'; (ix) 'ROMBHOT' participating in the ceremony in Pissa on 4 August 2014; (x) 'ROMBHOT' speaking to the children 'in the meeting before signing the agreed contract', telling them 'that they could not come back to the Anti-Balaka' and telling his elements 'in the town hall not to allow them to return'; (xi) 'ROMBHOT [committing] to free the children under his command and not to re-enrol them if the conflict reignited', and signing a 'contract document'; (xii) 'ROMBHOT' not attending [REDACTED]; and (xiii) 'four girls aged between 14-17, who were slaves and "wives" for ROMBHOT's Anti-Balaka "lieutenants"'. Furthermore, P-1974 identified 'ROMBHOT' in a video [REDACTED] (Annex A to the First Statement, CAR-OTP-2068-0586).¹⁴

¹⁴ CAR-OTP-2068-0222, at 0229-30, para. 46.

10. The witness refers on one occasion to Mr Ngaïssona, indicating that upon [REDACTED] to NGAISSONA the Anti Balaka Coordinator'.¹⁵
11. In his second statement (the 'Second Statement'),¹⁶ P-1974 added information to the First Statement, concerning the demobilisation ceremony in Pissa on 4 August 2014. Furthermore, P-1974 refers to Mr Yekatom several times,¹⁷ indicating that (i) 'there were [REDACTED] documents that were signed by YEKATOM' and that [REDACTED]; (ii) P-1974 'found a [REDACTED] YEKATOM'; (iii) 'YEKATOM did not [REDACTED]; (iv) [REDACTED] with YEKATOM'; and (v) 'YEKATOM had his own [REDACTED]'. Moreover, P-1974 indicates that 'some of these children were known personally by YEKATOM'.
12. The Chamber takes note of the Yekatom Defence's submissions that P-1974's statements contain references to the alleged acts and conduct of Mr Yekatom, and more specifically 'to the *actus reus* and *mens rea* of Count 29'. However, the Chamber recalls that references to the accused's acts and conduct do not *per se* constitute an obstacle to the introduction of a prior recorded testimony pursuant to Rule 68(3) of the Rules, and that this provision also does not preclude the introduction of evidence that is central to core issues of the case.
13. Relatedly, with regard to the Yekatom Defence's submissions on the uniqueness of P-1974's position and evidence, the Chamber recalls that it does not consider that this factor, by itself, militates against the introduction of his evidence under Rule 68(3) of the Rules. Moreover, the Chamber notes that P-2018 will testify fully live in court on the activities [REDACTED] concerning the demobilisation programme and Count 29, and therefore the participants will have the opportunity to examine both P-2018 and P-1974 on this topic in court, and on any discrepancies with testimonies of other witnesses. In light of this, the Chamber does not consider it necessary to hear P-1974 fully live in court.

¹⁵ CAR-OTP-2068-0222, at 0229-30, para. 46.

¹⁶ CAR-OTP-2122-8673; CAR-OTP-2122-9059 (translation).

¹⁷ CAR-OTP-2122-8673, at 8675-77, paras 13-14, 16, 18, 20-24.

14. Moreover, the Chamber observes that the introduction of P-1974's statement would cut the time for the Prosecution's examination of the witness by two-thirds,¹⁸ thereby promoting the expeditiousness of the proceedings.
15. Lastly, the Chamber notes that the Prosecution seeks to tender five associated items pursuant to Rule 68(3) of the Rules.¹⁹ However, noting that items CAR-OTP-2068-0586, CAR-OTP-2068-0558, CAR-OTP-2068-0568 and CAR-OTP-2128-1373 have already been recognised as formally submitted, the Chamber need not rule on them again.²⁰
16. In light of the above, the Chamber considers that the introduction of P-1974's prior recorded testimony is not prejudicial to or inconsistent with the rights of the accused.
17. Accordingly, the Chamber grants the Prosecution's request to introduce P-1974's statements²¹ and one associated item²² under Rule 68(3) of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that, subject to the fulfilment of the legal requirements of Rule 68(3) of the Rules, the prior recorded testimony of **P-1974** (CAR-OTP-2068-0222; CAR-OTP-2107-1810 (translation); CAR-OTP-2122-8673; CAR-OTP-2122-9059 (translation)) are introduced into evidence, together with its associated item (CAR-OTP-2128-1372); and

ORDERS the Yekatom Defence to file a public redacted version of the Response, ICC-01/14-01/18-1479-Conf, within one week of notification of the present decision.

¹⁸ Request, ICC-01/14-01/18-1463-Red, paras 1, 17.

¹⁹ Request, ICC-01/14-01/18-1463-Red, paras 12, 19.

²⁰ See Decision on Submitted Materials for P-2475, email from the Chamber, 9 November 2022, at 14:53; see Decision on Submitted Materials for P-0888, email from the Chamber, 31 October 2022, at 14:36.

²¹ CAR-OTP-2068-0222; CAR-OTP-2107-1810 (translation); CAR-OTP-2122-8673; CAR-OTP-2122-9059 (translation).

²² CAR-OTP-2128-1372.

Done in both English and French, the English version being authoritative.



Judge Péter Kovács



Judge Bertram Schmitt

Presiding Judge



Judge Chang-ho Chung

Dated 05 April 2023

At The Hague, The Netherlands